No. 9(1)-82-8Lab/1979.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Tiger Locks Ltd., Plot No. 3, Industrial Area, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHAK PRESIDING OFFICER LABOUR COURT, HARYANA, FARIDABAD

Reference No. 387 of 1980

between

SHRI SITTU RAM, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. TIGER LOCKS LIMITED, PLOT NO. 3, INDUSTRIAL ESTATE, GURGAON.

Shri R. N. Roy for the workman.

Shri M. P. Gupta for the respondent-management.

AWARD

This reference No. 387 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana ,—*vide* his order No. ID/GGN/46-80/44164, dated the 14th August, 1980 under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Sittu Ram, workman and the respondent-management of M/s. Tiger Locks Limited Plot, No. 3, Industrial Estate, Gurgaon. The term of the reference was :—

Whether the termination of services of Shri Sittu Ram was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties, on receiving this reference. The parties appeared and filed their pleadings. The claim of the workman is that he was retrenched on 1st April, 1980 as surplus while the applicant was the only welder and welding is a indispensable job in the manufacturing of locks. He joined the service on 1st November, 1975 and was drawing Rs. 272 per month. The respondent gave the notice, dated the 1st April, 1980 as surplus and in this way terminated the service. The workman was not surplus and the welding work never seized in the factory. So the termination by way of retrenchment is illegal and against the principles of natural justice, malafied. So he is entitled for his reinstatement with full back wages and continuity of service.

According to the written statement, the case of the respondent is that the reference is bad in law as the demand was never raised with the management at the first instance. The reference is inconsistent with the facts of the case and the same is liable to be dimissed. It is not an industrial dispute, so the reference is bad in law and this court has no jurisdiction to try the reference. The claimant was appointed as welder on 1st November, 1975 and at the time of retrenchment he was drawing Rs 272 per mensem. The management does not have welding work so the claimant was retrenched from the service and paid all compensation as per law. The management never terminated the services of the claimant, but retrenched on 1st April, 1980 as the welding work was not available with the respondent and it was the right of the management to retrench the workman as per the provisions of the law. After the retrenchment of the claimant, the management has not appointed any welder so far. So, the retrenchment is quite legal and not *mala fide*.

On the pleadings of the parties, the following issues were framed :—

(1) Whether the termination of service of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

(2) Relief ?

My findings on issue is as under :—

Issue No. 1 :

The respondent's representative argued that the respondent has retrenched the workman and not treminated. The workman has gave the same demand notice in which he has stated that the workman is retrenched as surplus on 1st April, 1980 and there is a still work with the respondent for the welder. In the written statement the respondent has admitted the retrenchment and the notice given. The respondent paid all the dues as required by law under section 25-F ,—vide Exhibit M-1 which is also admitted by the claimant in his statement as WW-2

that he has received the amount in Exhibit M-1. He further argued that it is also admitted that there was only one welder on the date of retrenchment and the welder was required for construction of the building work and the building work was at the end so his services were not required so his services were retrenched according, to law. He further argued that when the demand notice is for the retrenchment as surplus and the written statement is also the admission for retrenchment then it is wrong reference for termination. The retrenchment is not a termination in the strick sense of law and this court has no jurisdiction to try the retrenchment as it come under Schedule III of the Industrial Disputes Act, 1947 in which the Labour Court has no jurisdiction to decide the matter of retrenchment. The last come first go is also adopted by the respondent as stated by Shri Minnu Singh as WW-3, because the claimant was the only welder in the factory on the roll which is clear from Exhibit W-1 that he was appointed as welder on 1st November, 1975 as the documents filed by the workman cannot be disbelieved. The respondent took the same plea before the Labour Officer-cum-conciliation Officer which is shown in Exhibit W-2 filed by the workman in the statement of the respondent before the Conciliation Officer. The evidence of the workman there is no case of the workman that he does other work in the factory and he can be accommodated for other work. The applicant witness WW-1 Shri R. N. Roy, the representative of the workman as president of Mercantile Employees Association, has also admitted in his statement that no other person was appointed after the retrenchment of the workman and the workman had admitted in his statement as WW-2 that he was doing the welding work in the factory and now a day he is working in the Cylinder Gas Company as welder and no doing any other work like fitter, etc. He further argued that the reference is contrary to the fact of the case of both the parties and cannot hold good in the eye of law and in these circumstances the Court can not go beyond the terms of reference and when the terms is different from the facts then it is very clear that this Court has no jurisdiction to try this reference as bad in law. The representative of the management referred AIR 1979 Supreme Court page 1356 for this purpose in which it is held that the Court can not go beyond the terms of reference.

The representative of the workman argued that it is industrial dispute under section 2A of the Industrial Disputes Act and it is very clear under section 2(00) of the Industrial Disputes Act that retrenchment means the termination by the employer of the service of the workman for any reason what so ever. He further argued that it is not out of scope of the retrenchment as defined in the section and it is industrial dispute. The claimants witness Shri Minnu Singh, WW-3 has stated in his statement that two other persons are working in place of Shri Sittu Ram workman. This shows that the work is not finished in the factory. Work is still on and the person required to do this job are working in his place. The witness further stated that the claimant used to do the fitter work in the factory. So the respondent should have accommodated the workman in the fitter job with the welder was not required by the respondent, but it was done because the employee was an old employee and the respondent wants to get rid of because the claimant will complete five years of service and would be entitled for gratuity. This is an unfair labour practice and against the principles of natural justice. He further argued that the respondent produced no seniority list in the Court which was obligatory on the respondent to display on the notice-board before retrenching the workman under rule 77 of the Punjab Rules. So they failed to comply with the provisions of the law for retrenching the workman from the service. The workman referred 1960-II-LLJ-page 64, 1970-II-LLJ page 79 orally but did not give any book in the court to go through and know the contents of the citation so I cannot say what is given in the citation whether they are relevant with the case or not.

After going through the file and hearing the arguments of both the parties, I am of the view that it is a case of retrenchment and not of termination, which should have come with the same reference from the Government. The reference for termination of service is not proper in this case as the workman in his demand notice and claim statement states that he was retrenched as surplus and terminated by retrenchment was illegal. The respondent has also admitted in his written statement and gave the same type of evidence in the court. Moreover the workman has admitted in his cross-examination that he is working in the factory after his removal from the factory. He also admitted in his statement that he has received the amount shown in Exhibit M-1. After receiving the amount of notice pay etc., it is wrong to come with the demand notice that the retrenchment or termination was wrong. He has taken the amount of his own consent without any force so how I can say he was removed illegally. So the issue is decided in favour of the respondent and against the workman and the workman is not entitled to any relief. This be read in answer to this reference.

Dated, the 5th February, 1982.

HARI SINGH KAUSHIK,
Presiding Officer, Labour Court,
Haryana, Faridabad.

Endst. No. 457, dated the 19th February, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.